

TRAINING AND EMPLOYMENT NOTICE	NO. 17-19
	DATE February 10, 2020

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH
Assistant Secretary

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SUBJECT: Model Unemployment Insurance State Work Search Legislation

1. **Purpose.** To announce the availability and strongly encourage state workforce agency adoption of Model Unemployment Insurance (UI) State Work Search Legislation to more effectively achieve the rapid reemployment of UI claimants' in suitable work and to support claimants' ability to meet their responsibilities to actively seek work as a condition of UI eligibility.
2. **Action Requested.** The Employment and Training Administration (ETA) requests state administrators to review this notice and the attached Model UI State Work Search Legislation; to provide it to the state's UI Director and other appropriate state workforce system staff; to consider working with the state's legislature and UI stakeholders to adopt the model legislative language and framework for work search requirements; and to use technical assistance opportunities offered by ETA to strengthen reemployment strategies for claimants to speed their return to work.
3. **Summary and Background.**
 - a. Summary – This notice announces the availability of Model UI State Work Search Legislation that states may implement. The model legislation is developed to assist states in proactively referring claimants to suitable work; establishing a comprehensive definition of acceptable work search activities that focuses on rapid reemployment; and providing fair notice and documentation requirements.
 - b. Background – The Middle Class Tax Relief and Job Creation Act of 2012 amended Federal law to add Section 303(a)(12), of the Social Security Act (SSA), to require, as a condition for grant eligibility, that state unemployment compensation (UC) laws include a work search requirement. Each state defines acceptable work search activities for unemployment benefit eligibility purposes through its laws and policies. However, state laws and policies vary widely in the types of activities that qualify as acceptable work search activities, the number of activities required, how states monitor work search activities, and the effect of failure to conduct an adequate work search, for a given week. States' definitions of acceptable work search activities also vary in their effectiveness in promoting reemployment.

Requiring individuals who receive unemployment benefits to actively search for work promotes rapid reemployment and has the following advantages:

- It restores the individual's ability to have self-sustaining employment;
- It maintains the individual's participation in the labor force, which is good for the economy; and
- It reduces benefit duration, saving UI trust fund dollars.

Individuals temporarily receiving benefits while they find their next job are important customers of the workforce system, beyond the Reemployment Services and Eligibility Assessment (RESEA) program. The UI program is a mandatory one-stop partner under the Workforce Innovation and Opportunity Act (WIOA) and UI claimants are specifically named as potential customers of multiple workforce programs including the Wagner-Peyser Employment Service program, the WIOA Dislocated Worker program, and the Trade Adjustment Assistance program.

It is a best practice for states to have a fully integrated workforce system that focuses its collective efforts on assisting claimants getting back to work as quickly as possible in suitable jobs in the following ways:

- Encouraging states to proactively identify and refer suitable jobs openings from the full spectrum of public and private job banks to claimants and requiring claimants to apply to all referred suitable job openings (which may be beyond any minimum number of required work search activities) and accept employment in suitable work if offered;
- Requiring work search activities that embrace a wide array of activities that support reemployment in today's labor market and include receiving services through American Job Centers;
- Supporting claimant compliance with required work search activities through a reemployment service delivery design that includes ensuring that the claimant understands work search requirements (both acceptable activities and documentation requirements), understands the consequences of failing to comply with these requirements, and is provided assistance in developing a reemployment and work search plan that meets the requirements;
- Documenting these activities through the state's case management system or other information technology systems that support documentation requirements; and
- Providing case management services through American Job Center career counselors, which include following up with claimants and employers on the results of job referrals in order to inform future job referrals and/or the need for additional reemployment services for the claimant.

ETA notes that there are other strategies states should consider in developing their work search laws and designing reemployment service delivery strategies that support a claimant's ability to comply with a state's work search requirements. These strategies include:

- Designing the state RESEA program to support the development of an individual reemployment plan that can serve to help all claimants effectively plan their work search activities;
- Encouraging RESEA and other workforce career counselors to take advantage of the My Reemployment Plan tools that are designed to support development of individualized reemployment plans and connect claimants to effective reemployment resources (see https://rc.workforcegps.org/resources/2016/10/03/05/36/Pathway_to_Reemployment_Framework), with an automated version now available from the UI Information Technology Support Center; and
- Reinforcing the requirement to complete work search activities throughout the claims cycle through the use of electronic communications, either in an online technology application or through emails or texts, to “nudge” claimants to comply with work search requirements. In 2016, New Mexico implemented messaging and communication nudges in its online application forms that led to a reduction in the state’s UI improper payment rate (see <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/10/behavioral-analytics-help-save-unemployment-insurance-funds>).

4. Considerations When Developing State UI Work Search Legislation.

The model legislation and framework presented here are intended to support achievement of the goal of requiring claimants to actively seek for work, getting them back to work as quickly as possible. There are three components within the Model UI State Work Search Legislation, published as an attachment to this notice, for states to consider promoting:

- Proactive referrals of all suitable jobs to claimants on a weekly basis and requiring claimants to apply within one week as a condition of eligibility for benefits;
- Comprehensive and results-oriented work search activities that focus on rapid reemployment; and
- Compliance by addressing reporting requirements in deference to state regulation or policy.

ETA provides this model legislation as technical assistance and encourages states to review their work search laws, regulations, and policies, and to consider adopting the approach to work search requirements reflected in the Model UI State Work Search Legislation.

Note that the model legislation does not include the full range of work search requirements that need to be included in a state’s law, such as exemptions due to job attachment or work search requirements for Extended Benefits.

- Proactive Referrals to Suitable Work.** States need to make registration for work a meaningful requirement and ensure that claimants are informed of and apply for all suitable jobs to enable their return to work as quickly as possible. States and American

Job Centers should have business processes in place to proactively refer all suitable jobs to claimants throughout the life of the claim and, as a best practice, may require that claimants apply to all referred jobs as a condition of continued eligibility, and accept employment in suitable jobs, if offered. To support this proactive approach to job referrals and to promote rapid reemployment to reduce benefit duration, states should:

- Improve their ability to use their job banks, and the wide array of private job banks, as tools to identify suitable jobs for claimants;
- Identify suitable jobs, in accordance with the state's definition of "suitable jobs," to which individual claimants are referred; and
- Have processes in place to adjudicate a claimant's failure to accept suitable work in accordance with Federal and state laws.

The proposed model legislation presumes that states have existing laws that require claimants to accept suitable work. State laws that establish suitability requirements must, at a minimum, meet the labor standards in Section 3304(a)(5), FUTA.

- b. Comprehensive and Results-Oriented Work Search Activities.** Federal law requires that claimants actively seek work in "any week" that benefits are claimed as a condition of eligibility. States are encouraged to have aggressive work search policies to support the claimant's rapid reemployment.

Many states' work search requirements rely solely on employer contacts or applications that, while important, do not fully reflect how hiring occurs in the modern labor market and do not effectively connect claimants to workforce system services that will help them become reemployed. In establishing the types of acceptable work search activities to be included in states' laws or policies, the most important consideration is whether the activities are designed to result in the claimant's rapid reemployment. The quality of the work search activity is critical.

The range of work search activities available to claimant job seekers should, as a best practice, be broad and include any activity that supports finding suitable employment. Resources outside of the workforce system can be leveraged, including private sector on-line job search tools, social media and networking sites, libraries, community-based organizations, and any other resources that will assist claimants in finding suitable employment.

The proposed list of acceptable work search activities in the attached model legislation was developed by a Federal/State workgroup and represents activities designed to support rapid reemployment in today's labor market. The workgroup produced the Pathway to Reemployment Framework which includes a re-envisioned approach to work search for claimants (see https://rc.workforcegps.org/resources/2016/10/03/05/36/Pathway_to_Reemployment_Framework).

c. **Notice of Work Search Requirements.** At the time the initial claim is filed and at any other time during the benefit year that the requirements substantially change, states must notify claimants of the following in writing: the acceptable types of work search activities, the number of work search activities required to be completed in any week, the requirements for producing documentation, and the requirement to apply to, and accept if offered, suitable jobs referred by the agency. States should address how they will retain records of notices provided to claimants. States are also strongly encouraged to reinforce these requirements throughout the lifecycle of the claim through RESEA services, pop-up messages when claimants file for and certify for benefits, and through emails and text messages.

d. **Work Search Documentation Requirements.** States vary in their requirements to document work search activities. Many states require the claimant to keep a log of their work search activities and produce it upon request. States are increasingly using automation to capture claimant work search activities as they occur as part of the weekly claim certification process. Some states require claimants to report their work search activities through the state's interactive voice response system, which is not optimal, given that the information is relatively detailed and difficult to relay and capture accurately over the phone. States are encouraged to develop other innovative strategies to document work search activities by leveraging their case management systems that support workforce services and by partnering with private workforce partners such as LinkedIn, which is currently working with several states on reemployment initiatives for claimants.

Requirements for documentation of work search activities support the state's ability to verify that the claimant completed the required work search activities. Below are considerations that states should strongly keep in mind when developing their policies and processes related to work search documentation:

- If feasible, the most efficient and effective way to capture work search activities is to integrate capturing work search activities with the state's on-line weekly certification process. This enables the state to immediately know whether the claimant has completed the correct number of activities prior to payment of benefits for the week and presents an opportunity to prevent improper payments.
- States should help claimants understand methods to document their work search activities, particularly when they are conducting job searches online. States should use the same opportunities they use to message claimants about work search requirements to also reinforce documentation requirements. States are encouraged to review the "Documentation and Validation of Required Work Search for Unemployment Insurance Eligibility" guide (see https://rc.workforcegps.org/resources/2016/10/03/05/36/Pathway_to_Reemployment_Framework).
- States have lower improper payment rates related to work search requirements when they:
 - Include reemployment service activities as acceptable work search activities;
 - Support claimant compliance with work search requirements by connecting them to reemployment services; and

- Have automated systems that document claimants' participation in reemployment service activities to support verification of completed work search activities.
- States that encourage active use of the state's job bank to search for work, and have integrated UI and Employment Service/Workforce Program technology systems, provide a seamless method for documenting work search activities that presents an opportunity to prevent improper payments.

5. **Inquiries.** Please direct inquiries to the appropriate ETA Regional Office.

6. **References.**

- Sections 303(a), 303(j), and 306 of the Social Security Act (SSA), codified at 42 U.S.C. 503(a) and (j) and 42 U.S.C. 506;
- Section 3304(a)(5), of the Federal Unemployment Tax Act (FUTA);
- Improper Payments Elimination and Recovery Act (IPERA) of 2010 (Public Law 111-204);
- Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96);
- Workforce Innovation and Opportunity Act (Public Law 113-128);
- Bipartisan Budget Act of 2018 (Public Law 115-123); and
- Training and Employment Notice (TEN) No. 35-15, *Encouraging Collaborations between the Workforce Investment System and Public Libraries to Meet Career and Employment Needs*.

7. **Attachment(s).**

Attachment I – Model Unemployment Insurance State Work Search Legislation.

MODEL UNEMPLOYMENT INSURANCE STATE WORK SEARCH LEGISLATION

Proposed Statutory Language

Section 100. Requirement to be actively seeking work.

As a condition of eligibility for unemployment compensation in any week, a claimant must be able to work, available to work, and actively seeking work, unless exempted under [reference state and federal law for work search exemptions].

Section 101. Definition of actively seeking work.

A claimant must meet the following requirements to be actively seeking work:

1. A claimant who receives referrals from [the department] to a job or jobs considered to be suitable, as otherwise defined in state law, must apply for such job(s) within one week of receiving the referral and accept employment in suitable work if offered;
2. The claimant has performed at least the required number of acceptable work search activities in the week for which benefits are claimed as established in state [regulation and/or policy]. Acceptable work search activities include:
 - a) Creating a reemployment plan;
 - b) Creating a resume;
 - c) Uploading their resume to online job boards;
 - d) Registering for work with the state's labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices;
 - e) Using online career tools;
 - f) Logging on and looking for work in the state's labor exchange or other online job matching system;
 - g) Using reemployment services in [American Job Centers] or completing similar online or self-service activities (e.g. obtaining and using labor market and career information, participating in Reemployment Services and Eligibility Assessment (RESEA) activities, participating in skills assessment for occupational matching, instructional workshops, or other specialized activities);
 - h) Completing job applications for employers that have (or are reasonably expected to have) job openings, or following through on job referrals or job development attempts, as directed by state workforce or UI staff;
 - i) Applying for and/or participating in employment and training services provided by partner programs in [American Job Centers];
 - j) Creating a personal user profile on a professional networking site;
 - k) Participating in work-related networking events (e.g. job clubs, job fairs, industry association events, networking groups, etc.);
 - l) Making contacts or in-person visits to employers that have, or are reasonably expected to have, job openings;
 - m) Taking a civil service exam;

- n) Going on interviews with employers (virtually or in-person); or
 - o) Any other work search activities prescribed by the state in [regulation and/or policy];
and
3. The claimant has maintained a work search activity log and submitted weekly work search activity logs to the state UI agency using the method prescribed in state [regulation and/or policy].

Section 102. Notification to claimants of requirement to be actively seeking work.

The [State UI Agency] shall notify claimants, using the delivery method selected by the claimant [or in accordance with existing section of state law], of the requirement to actively seek work at the time an initial claim is filed and at any other time during the benefit year that the requirement for actively seeking work substantially changes. Delivery methods may include U.S. mail, email, online mailbox, or text. This notification should include the types of acceptable work search activities; the number of work search activities required in any week; the state requirement for documentation of work search activities; and the requirement to apply to, and accept if offered, suitable jobs referred by the agency.

States may wish to consider whether to include statutory and/or regulatory requirements for the “able to work” and “available to work” clauses separately.